IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

Bahadur Ram Vs. State of Rajasthan & Others.
(S.B. Civil Writ Petition No.1350/1997)

DATE OF ORDER : November 01, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. M.S. Singhvi for the petitioner.
Mr. O.P. Rathi, Dy. Government Advocate.

Reportable BY THE COURT :

By this writ petition, the petitioner has challenged order dated 23.02.1994 passed by the Superintendent of Police, Churu whereby the petitioner was dismissed from service from the post of Constable in the Police Department as well as enquiry report dated 30.01.1993 of the Enquiry Officer (Dy. S.P., Churu) and so also order passed by the appellate authority, Deputy Inspector General of Police, Bikaner Range, Bikaner dated 14.03.1995 and the order passed by the Reviewing Authority dated 19.02.1996

whereby the order of termination passed by the Superintendent of Police, Churu was upheld.

According to the facts narrated in the petition, the petitioner was substantively working on the post of Constable in the Police Department. Initially he was appointed on 01.01.1985. It is indicated in the petition that the petitioner alongwith two other persons was charged for theft under Sections 379 and 411, I.P.C. and an FIR was lodged bearing No.89/1991 on 25.05.1991 at the Police Station Sri Dungargarh (Churu District). In that FIR, the police submitted FR after investigation on the ground of limitation of jurisdiction of Police Station Shri Dungargarh. Thereafter, for the same allegation, another FIR was registered at Police Station Doodhwa Khara on 29.05.1991. In that FIR, investigation was conducted and, thereafter, challan was filed by the police against the petitioner and two other persons for offence under Section 420, I.P.C. in the Court of Chief Judl. Magistrate, Churu. In connection with that FIR, the petitioner was kept in police custody for 10 days and then he was released on bail. After trial, vide judgment dated 25.05.1995, the learned Chief Judl. Magistrate, Churu acquitted the petitioner alongwith two other persons from the charges levelled against them. The said judgment is placed on record as Annex.-3.

As per the allegations in the FIR, one Danaram (P.W.-5) alleged that the petitioner played fraud upon him by taking away his camel from the custody of Bachchan Singh impressing upon Bachchan Singh that the camel will be returned to him (Dana Ram). At the trial, the petitioner denied all the charges levelled against him and, for adjudication, 3 questions were framed by the trial Court, namely – (i) whether or not the petitioner played fraud upon Dana Ram and conspired with two other persons viz., Ishwar Singh and Hardev Ram to grab the camel belonging to Dana Ram; (ii) whether the petitioner alongwith others had played fraud upon Dana Ram by taking away camel from the residence of Bachchan Singh conveying to him that the same will be returned to Dana Ram; and, (iii) if it is so, for which offence the accused persons can be held liable for punishment.

On both the aforesaid substantial questions, after taking into account the evidence recorded in the case, the learned Chief Judl. Magistrate, Churu acquitted the petitioner holding that the petitioner is not guilty of any of the charges levelled against him. Thus, the criminal Court for the aforesaid charges, after due trial in accordance with law, acquitted the petitioner and held that the petitioner is not guilty of any of the charges levelled against him. The said judgment was delivered by the trial Court on 29.05.1995 which attained finality as no appeal was filed by the

State against that judgment.

On the same charge which was levelled against the petitioner in the criminal Court as noted above, however, a departmental enquiry was initiated against the petitioner and, in that enquiry, the petitioner was penalized with penalty of dismissal from service. The petitioner was placed under suspension under Rule 13 of the RCS (CCA) Rules. After issuance of the charge-sheet under Rule 16 of the CCA Rules on 07.11.1991, the petitioner filed his detailed reply to the charge-sheet. Alongwith the reply, the petitioner made a representation for staying the departmental enquiry while the criminal case was pending for the same charge in the criminal Court; but, no heed was paid by the respondents and the departmental enquiry was continued simultaneously. During the course of the enquiry, 13 witnesses were examined by the Enquiry Officer and, in defence, the petitioner led evidence of 9 witnesses. After conclusion of the enquiry, the Enquiry Officer submitted the enquiry report to the Disciplinary Authority. The Disciplinary Authority issued show-cause notice on 13.01.1994 asking the petitioner to submit explanation to the report of the Enquiry Officer. The petitioner filed his representation against the conclusion of the enquiry report dated 30.01.1994 stating that he was not given reasonable opportunity in the enquiry. The petitioner also

pointed out that the representations were filed for supplying documents but the grounds raised by him were turned down and finally the Disciplinary Authority imposed the penalty of dismissal from service upon the petitioner. Against the order of dismissal, the petitioner filed appeal which was dismissed by the appellate authority vide order dated 20.12.1994. A review petition was also filed by the petitioner which was dismissed vide order dated 19.02.1996. Hence the present writ petition.

Learned counsel for the petitioner while challenging the aforesaid orders, submitted that once the criminal Court has acquitted the petitioner from the charges the same cannot be prosecuted by the respondents to prejudice the petitioner. It is submitted that the charge of fraud and theft levelled against the petitioner is found to be baseless after consideration of the evidence of the prosecution witnesses at the trial and the trial Court has specifically observed that the incident is totally without any evidence and there is nothing on record to establish the charge against the petitioner and others that they tried to play fraud upon Bachchan Singh. There is no evidence to establish that the petitioner had committed any act of conspiracy so as to defraud Dana Ram. The criminal Court having reached the conclusion that no offence is made out against the petitioner and others, on the same charge and upon the same set of evidence,

the petitioner cannot be punished by the Department; but, in the departmental enquiry before conclusion of the criminal trial, the petitioner was punished by the Department.

Learned counsel for the petitioner vehemently argued that in the departmental enquiry as many as 13 witnesses were examined and, before the criminal Court also, the prosecution led evidence of the same set of witnesses. According to learned counsel for the petitioner, the evidence of the prosecution witnesses recorded at the trial completely failed to establish the charge against the petitioner that any fraud was at all committed by the petitioner; then, it is clear that concocted and false story was coined up for implicating the petitioner and the petitioner has been charge-sheeted by the Department merely on the ground that after investigation in the FIR filed by Dana Ram on 29.05.1991 the police have filed challan and in the investigation it has come out that the petitioner has committed offence of fraud. On that basis, the petitioner was arrested and challan was filed. It is argued by learned counsel for the petitioner that the charge levelled against the petitioner in the charge-sheet issued under Rule 16 of the CCA Rules cannot be termed as misconduct unless it is proved before the trial Court in the criminal case. Mere filing of the challan against a State employee does not constitute misconduct so as to warrant

disciplinary action, therefore, in the face of the finding recorded by the trial Court, the termination order passed by the Disciplinary Authority, Superintendent of Police before conclusion of the criminal trial vide order dated 23.02.1994 deserves to be quashed.

In support of his submission, learned counsel for the petitioner placed reliance upon the judgment of this Court passed in S.B. Civil Writ Petition No.669/1989, Kalu Ram Vs. State & Another, decided on 21.09.1989. Learned counsel for the petitioner also placed reliance upon the judgment of the Supreme Court reported in (2006) 5 SCC 446, G.M. Tank Vs. State of Gujarat & Others.

Drawing strength from the aforequoted legal position, learned counsel for the petitioner submitted that though the order inflicting penalty upon the petitioner was passed prior to the judgment of the criminal Court, however, the criminal Court has acquitted the petitioner; and, during the pendency of the criminal case against the petitioner, the petitioner made representations for staying the departmental proceedings against him. It is further submitted that during the pendency of the review petition filed by the petitioner against the orders of the Disciplinary Authority and the appellate Authority, which was decided on 19.02.1996, the petitioner was already acquitted by

the criminal Court.

With regard to the order passed by the Disciplinary Authority dated 28.02.1994, it is submitted by learned counsel for the petitioner that the finding of the Disciplinary Authority is perverse and liable to be set aside. It is contended that the allegation in the charge itself speaks that only on the basis of filing challan after investigation in a particular FIR it has been held that it is misconduct whereas the Disciplinary Authority was to stay the proceedings till the decision of the criminal Court. It is also submitted that till final conclusion of the criminal case, for the same charge, finding could not be arrived at by the Disciplinary Authority with regard to the allegations which were subject-matter of the criminal case, therefore, mere filing of challan after investigation by the police does not fall within the term "misconduct" unless it is proved before the criminal Court and does not warrant any disciplinary action against the petitioner. According to learned counsel for the petitioner the whole enquiry was conducted against the petitioner against the principles of natural justice and proper opportunity to defend his case was not provided to the petitioner nor the procedure was followed in its strict sense. Learned counsel for the petitioner argued that the Enquiry Officer has proceeded on assumption that the petitioner is guilty of the charge levelled against him

whereas according to the charge itself only investigation was conducted by the police in the FIR filed and challan was filed in the Court for the allegation of playing fraud. This aspect of the matter was required to be considered by the Enquiry Officer before proceeding to record finding against the petitioner; more so, application was filed by the petitioner for staying the enquiry proceedings till the final adjudication of the criminal case. Therefore, it is obvious that in the event of being honourably acquitted by the criminal Court on the same set of evidence, it can very well be said that the finding is based on no evidence against the petitioner.

Learned counsel for the petitioner vehemently argued that the order of the appellate authority is perverse and vitiated on the ground that it has been passed without due application of mind and without assigning reasons for maintaining the order passed by the Disciplinary Authority of extreme penalty of dismissal from service.

It is submitted that Rule 30 of the RCS (CCA) Rules, 1958 requires that the appellate authority while considering the appeal must appreciate whether the procedure prescribed in the rules has been complied with; whether the penalty imposed is warranted on the basis of the evidence available on record and is proportionate to the gravity of the misconduct alleged. It is

contended that the appellate authority has not appreciated the evidence on record with a view to deciding about the sustainability of the finding recorded by the Disciplinary Authority. It is submitted by learned counsel for the petitioner that all these aspects have not been taken into consideration by the appellate authority and, therefore, the order passed by the appellate authority is non-speaking order and deserves to be quashed.

Learned counsel for the petitioner next contended that the judgment of the criminal Court was delivered on 29.05.1995 and this fact was brought to the notice of the Reviewing Authority; but, the Reviewing Authority in its order dated 19.02.1996 did not consider the fact that the charges were not established before the criminal Court upon the same set of evidence led by the prosecution and the petitioner was acquitted in the criminal case. According to learned counsel for the petitioner, this has resulted into double jeopardy and in breach of the principles of natural justice.

On the other hand, the learned Dy. Government Advocate vehemently opposed the prayer of the petitioner and stated that the petitioner was constable in the Police Department and he has misused his position in the police and committed offence of fraud while cheating a citizen and the camel in question was taken

away from the custody of Bachchan Singh which was not returned to Dana Ram and upon demand it was wrongly said that he had purchased it and will not return, therefore, for his misconduct he was charge-sheeted.

In the investigation carried out in connection with FIR No.81/91, the investigating officer after conducting proper investigation filed challan and the petitioner was taken into custody. It is contended by the learned counsel for the State that on these facts the petitioner was charge-sheeted for the misconduct he committed and after due enquiry and upon the finding arrived at by the Enquiry Officer, the Disciplinary Authority, after affording opportunity to the petitioner, has rightly held him liable to the penalty which has been imposed vide the impugned order dated 23.02.1994 for dismissal from service.

Learned Dy. Government Advocate argued that in this case the important aspect of the matter is that the petitioner was a police employee and it was expected of him to maintain discipline and devotion to duty of protecting the rights of the citizens; but, the petitioner committed the offence of playing fraud upon one Bachchan Singh while assuring him that the camel in question will be returned to Dana Ram but upon demand by Dana Ram he refused to give back the camel and

thus the camel was fraudulently taken away from the custody of Bachchan Singh.

Learned counsel for the State further submitted that the Disciplinary Authority after considering the entire material on record and so also statements recorded of the witnesses has rightly arrived at the finding that the petitioner is guilty of the misconduct of playing fraud for which challan was filed by the police. It is contended on behalf of the State that the orders of the authorities are speaking orders and have been passed after taking into account the entire evidence on record and so also the documents which were filed before the Enquiry Officer and, after full-fledged enquiry, finding was arrived at by the Enquiry Officer that the petitioner is guilty of misconduct because he has committed offence of fraud and in pursuance of that the Disciplinary Authority after providing opportunity as per the Rules of 1958 passed order of imposing penalty of dismissal which is perfectly legal order being based on cogent reasons and, similarly, the order passed by the appellate authority is in accordance with law and the order of reviewing authority is also rightly passed in this case.

With regard to staying the departmental proceedings during the pendency of the criminal case, it is submitted that in the departmental enquiry the Department proceeds to take

action for the misconduct committed in service whereas in the criminal case the criminal Court is required to adjudicate upon the charges levelled under the Indian Penal Code for punishment for a criminal charge, therefore, the adjudication by both the Disciplinary Authority and the criminal Court differs significantly being viewed and appreciated in different manner and from different aspects, therefore, on the ground of acquittal by the criminal Court it is not necessary nor proper to exonerate the delinquent against whom disciplinary proceedings has been initiated. As such the Disciplinary Authority has rightly passed order for dismissal for alleged misconduct committed by the petitioner which was proved in the departmental enquiry. In support of above argument, he has cited judgment of the Supreme Court, report in AIR 1997 SC 70, State of Rajasthan Vs. B.K. Meena.

I have considered the rival submissions and carefully gone through the material on record. I have also considered the judgments cited by learned counsel for the petitioner.

In this case, in the departmental enquiry, admittedly, 13 witnesses were examined. Charge was levelled against the petitioner in relation to filing of challan after investigation in the FIR filed on 29.05.1991 under Section 420, I.P.C. The charge framed against the petitioner reads as under :

> "यह कि दिनांक 29.5.91 को पुलिसथाना दुधवाखारा पर मुकदमा नम्बर 32 दिनांक 29.5.91 धारा 420, भा०द०स० आपके व आपके साथियों के विरूद्ध दर्ज हुआ, जिसकी तफतीश श्री राजेन्द्रसिंह तत्कालीन थाना अधिकारी, पुलिसथाना दुधवाखारा द्वारा की गई। थानाधिकारी ने दौराने तफतीश गवाहान सर्वश्री अब्दुल गफूर, नेक मोहम्मद, दानाराम, सरजीत सिंह, बचन सिंह, भंवरा राईका, किशना राम, भंवरसिंह, श्रवण सिंह, बाघ सिंह, भींवाराम के बयान लिये। थाना अधिकारी ने बाद तफतीश आपके विरूद्ध सबूत पाये जाने पर आपको दिनांक 27.6.91 को गिरफ्तार किया व न्यायालय से आपका रिमाण्ड भी हासिल किया।
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> आपका उक्त कृत्य व आचरण, घोर अनुशासनहीनता, अपराधी प्रवृति, कानून विरूद्ध, स्वेच्छाचारिता एवं पुलिस विभाग की छवी को कलंकित करने का द्योतक है, जो नियमानुसार दण्डनीय है।"

Likewise, in the FIR filed on 29.05.1991, identical allegations against the petitioner and two others made in respect of the same incident were subject-matter of investigation by the police.

For the same charge, in the criminal Court, 12 witnesses were examined by the prosecution and in the departmental enquiry 13 witnesses were examined. At the criminal trial, the prosecution led oral evidence of witnesses Nek Mohammed, P.W.-1, Abdul Gaffar, P.W.-2, Kisana Ram, P.W.-3, Sarjeet Singh, P.W.-4, Dana Ram, P.W.-5, Bachchan Singh, P.W.-6, Jai Singh, P.W.-7, Bhinwa Ram, P.W.-8, Shravan Singh, P.W.-9, Bhanwar Singh, P.W.10, Bhanwara Ram, P.W.-11, and Rajendra Singh, P.W.-12. Almost the same set of evidence was produced by the Department before the Enquiry Officer and, that too, only for the purpose of proving charge to the extent of police investigation and filing of challan. It is already noted

hereinabove that the prosecution evidence recorded by the criminal Court failed to establish the charge against the petitioner in respect of which the police filed challan after investigation; meaning thereby, for the purpose of final adjudication, the criminal Court has assessed the statements and evidence of these prosecution witnesses and discredited the evidence of these witnesses. The criminal Court arrived at the conclusion that no offence is made out. However, in the disciplinary proceedings, the charge of filing challan and arrest on the basis of investigation has been treated to be proved and, the petitioner has been penalized with dismissal from service. In my opinion, the finding of the Disciplinary Authority deserves to be quashed on the ground that before the Disciplinary Authority, the prosecution was to prove only that in the investigation conducted by the police the petitioner was found to have committed the offence of fraud. Even if it is accepted to have been proved in the disciplinary proceedings, however, in the event of being honourably acquitted by the criminal Court, it is obvious that the finding arrived at in the disciplinary proceedings cannot be sustained in law as the same is required to be treated as vitiated. Moreover, while the criminal Court has assessed the value of the investigation after recording statements of the prosecution witnesses on oath, on the other hand, in the

disciplinary proceedings the charge of providng case of fraud in the investigation was assessed on the basis of the evidence collected in the investigation. Therefore, a distinction can be arrived at that though prior to final adjudication of the criminal case the Disciplinary Authority has passed order of dismissal but apparently it is for the purpose of charge of filing of challan against the petitioner with regard to fraud after investigation by the police but that investigation was assessed by the criminal Court after taking evidence of the same set of prosecution witnesses on oath and held that the petitioner is not guilty of any offence. In that event, the only course left for this Court is to accept the adjudication made by the criminal Court for the purpose of quashing order of dismissal which is passed by the Disciplinary Authority on the basis of alleged charge of fraud by filing of challan upon the evidence which is assessed by the Disciplinary Authority to the extent of filing challan; meaning thereby, in the disciplinary proceedings only the preliminary stage till completion of investigation by the police was assessed by the Disciplinary Authority for the purpose of proving misconduct whereas in the criminal case the criminal Court has assessed the value of evidence collected in the investigation after recording statements of the prosecution witnesses on oath. Therefore, the finding of the criminal Court has preponderant

credibility than the finding of the Disciplinary Authority. Since the police investigation conducted in the FIR filed on 29.05.1991, which was the subject-matter of the departmental proceedings, fell flat with the acquittal of the petitioner in the criminal case, therefore, the finding arrived at in the disciplinary proceedings on the question of commission of fraud against the petitioner was rendered redundant for the purpose of warranting punishment.

In G.M. Tank's case (supra), the Supreme Court while taking note of earlier decision of the Court in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd., (1999) 3 SCC 679, observed in the case that the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same and upon examination of the situation, their Lordships of the Supreme Court held as follows :

> "This is a case of no evidence. There is no iota of evidence against the appellant to hold that the appellant is guilty of having illegally accumulated excess income by way of gratification. The investigating officer and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the

> conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. The judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand."

With regard to the contention of the learned counsel for the petitioner that the departmental enquiry was to be stayed till the conclusion of the trial by the competent criminal Court because challan was filed against the petitioner for the same charge, in my opinion, upon perusal of the charge-sheet of this case, it is clear that charges are related to the investigation conducted by the Police Station Doodhwakhara in connection with FIR No.32/91 and it was observed in the charge-sheet that because after investigation in the case challan for the offence of fraud under Section 420, I.P.C. has been filed and the petitioner was arrested and remanded to the police custody for the purpose of investigation, then, obviously whether any criminal offence is committed by the petitioner accused or not, it is subject-matter of trial. Of course, for the purpose of finding with regard to misconduct, there is jurisdiction and power vested in the Disciplinary Authority to proceed with the enquiry proceedings even if trial of the criminal case is pending in view of the

judgment of the apex Court in the case of State of Rajasthan Vs. B.K. Meena (supra); but, in this case, from perusal of the language of the charge framed against the petitioner it is clear that for the same set of evidence charge-sheet was filed in the criminal Court and, admittedly, after due trial the petitioner was acquitted from the said charge. Therefore, during the pendency of the criminal trial, the disciplinary proceedings against the petitioner was to be stayed till the disposal of the trial before the criminal Court. But, this was not done in this case and, ultimately, prior to acquittal of the petitioner in the criminal case, finding was arrived at in the departmental proceedings upon which the petitioner was dismissed from service. In these circumstances, the dismissal of the petitioner from service can be defined as an act of the Department in haste and oppressive. After judgment of the criminal Court for the same charge, dated 29.05.1995, the order of dismissal of the petitioner and so also the consequential orders passed by the higher authorities in the appeal and review petition deserve to be quashed and set aside.

In the aforesaid facts and circumstances, while following the principle of law laid down by the apex Court in the case of Capt. G.M. Tank (supra), the writ petition is allowed. Impugned orders dated 23.02.1994 (Annex.-13), 20.12.1994 (Annex.-15) and 19.02.1996 (Annex.-18) as well as enquiry report Annex.-10

dated 30.01.1993 are hereby quashed and set aside. It is ordered that the petitioner shall be reinstated in service forthwith with all consequential benefits and shall be paid full salary for the period he was under suspension. The petitioner shall, however, not be entitled for the salary for the period from the date of passing of the order of dismissal from service vide Annex.-13 dated 23.02.1994 till the date of the judgment of the criminal Court dated 29.05.1995.

No order as to costs.

(Gopal Krishan Vyas) J.